IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

WP(C).No. 32089 of 2007(T)

PETITIONER:

NIMISHA BHASKAR, D/O T.P.BHASKARAN,
AGED 20 YEARS, 'SURABHI',
KALPETTA NORTH, WAYANAD.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS:

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1. **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVT., HIGHER EDUCATION DEPARTMENT, GOVT. SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE COMMISSIONER FOR ENTRANCE EXAMINATIONS, HOUSING BOARD BUILDING, SANTHI NAGAR, THIRUVANANTHAPURAM.**

3. **KANNUR DENTAL COLLEGE, ANJARAKKANDY, KANNUR, REPRESENTED BY ITS PRINCIPAL.**

4. **GOVERNMENT COLLEGE OF VETERINARY AND ANIMAL SCIENCES, POOKKOTTE, WAYANAD.**

BY ADV. SRI.A.MOHAMED MUSTAQUE
SRI.M.K.SUMOD
BY GOVERNMENT PLEADER SRI. M.R. SABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/10/2007, THE COURT ON 07/11/2007 DELIVERED THE FOLLOWING:

KSS

WPC.NO.32089/2007 T

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ALLOTMENT MEMO ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.**

EXT.P2: **COPY OF THE LIST OF HIGHER OPTIONS GIVEN BY THE PETITIONER ON 27/09/2007 TO THE SECOND RESPONDENT.**

EXT.P3: **COPY OF THE ALLOTMENT LETTER ISSUED BY THE SECOND RESPONDENT ALLOTING THE PETITIONER TO THE 4TH RESPONDENT COLLEGE.**

EXT.P4: **COPY OF THE NEWSPAPER REPORT IN THE MATHRUBHUMI DAILY DTD. 20/10/2007.**

EXT.P5: **COPY OF THE FAX MESSAGE DTD. 25/10/2007 SENT BY THE PETITIONER TO THE SECOND RESPONDENT.**

EXT.P6: **COPY OF THE FAX MESSAGE SENT BY THE PETITIONER TO THE SECOND RESPONDENT DTD. 26/10/2007.**

EXT.P7: **COPY OF THE RELEVANT PORTION OF THE PROSPECTUS INDICATING THE RULES RELATING TO OPTIONS VIZ.CLAUSE 11.6 AGE PAGES 35 TO 39 OF THE PROSPECTUS ISSUED BY THE SECOND RESPONDENT.**

/TRUE COPY/

P.S.TO JUDGE

KSS

ANTONY DOMINIC, J.

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W.P.(C) No. 32089 OF 2007 T
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Dated this the 7th November, 2007

J U D G M E N T

The prayer sought for in this writ petition is to declare that the petitioner is entitled to join the 4th respondent college for B.V.Sc. Course pursuant to Ext. P3 allotment memo of the Commissioner of Entrance Examinations and that the refusal of the 3rd respondent to issue T.C. is against the prospectus and hence illegal. Petitioner is also seeking a direction to respondents 1 to 3 to ensure that the petitioner gets T.C. and other required documents from the 3rd respondent college for her to join the 4th respondent college.

2. Based on her ranking in the entrance examination, petitioner was allotted to the 3rd respondent college for B.D.S. Course where she had joined on 25-9-2007. She had exercised higher options as per Ext. P2 and based on this, in the third and final allotment made on 19-7-2007, she was allotted to

the 4th respondent colelge for B.V.Sc. Course. Thereupon, she approached the 3rd respondent college for getting T.C. so as to join the 4th respondent college. But, however, T.C. was not issued. She made repeated representations and there was no response. It is in this background the writ petition was filed with the reliefs mentioned above.

3. Notice was served on the 3rd respondent college by special messenger and counsel sought to justify the refusal to issue T.C. by referring to the provisions contained in Ext. P7 prospectus and in particular clause 12.2.4. According to the learned counsel this provision enables the college to levy Rs. 1 lakh from candidates discontinuing their studies towards liquidated damages.

4. Since the college is attempting to justify their refusal to issue T.C. referring to clause 12.2.4, the said clause is extracted for ready reference:

> "12.2.4 Levying amount towards liquidated damages from candidates discontinuing their studies: If any candidate admitted against 'Government' seats in Government/Aided/Self-financing colleges, discontinues the studies after the closing of admissions in the same academic year or in subsequent academic years, to join other

> courses or for other purposes, he/she is liable to pay a liquidated damage of Rs.1,00,000/- (Rupees one lakh only) for MBBS, BDS courses and Rs.50,000/- (Rupees fifty thousand only) for other courses. The liquidated damages for those discontinuing courses in Government Engineering Colleges will be Rs.25,000/- (Rs. Twenty five thousand only). In all such cases the Transfer Certificate will be issued only after remitting the liquidated damage to the authority concerned. Candidates belonging to SC/ST/OEC are exempted from this rule. Candidates belonging to 'Keralite' category, as per Clause 6.1(i), whose annual family income is below Rs.1,00,000/- and who have submitted Income Certificate along with the application for admission to Professional Degree courses, 2007 will also be exempted from payment of Liquidated damages. Candidates who are transferred from one institution to other as per proceedings of the University concerned are exempted from payment of liquidated damages."

5. On the other hand counsel for the writ petitioner would submit that the petitioner is entitled to exercise higher option and that if an allotment is made based on such higher option, the candidate is bound to accept the same. It was pointed out that the allotment to the 4th respondent college is made in terms of the prospectus, and the admission is based on a time frame provided therein and that clause 12.2.4 does not apply to the petitioner. It is further

contended that clause 12.2.4 deals only with the consequences when a candidate discontinues the course and not leaves the college based on allotment orders issued by the Commissioner for Entrance Examinations.

6. I have considered the submissions made by both sides. In my view clause 12.2.4 applies only to those candidates discontinuing their "studies". If a candidate discontinues the studies after the closing of admissions in the academic year or subsequent academic year to join other courses or other purposes, then the levy of liquidated damages cannot be avoided. Here is a case where based on the higher options exercised by the petitioner, the 2nd respondent allotted her to the 4th respondent college before the closing of the admissions.

7. A reading of clause 12.2.4 also makes it clear that it can apply only in a case where a candidate discontinues her studies which implies a voluntary act on her part and cannot take in the case of a student leaving the college on being allotted to another college. Here the petitioner has not discontinued her studies, but is continuing her studies

in another college based on the allotment made by the 2nd respondent and that too before the closure of the admissions in the academic year. If that be the position emerging from clause 12.2.4 of Ext. P7 prospectus, the college cannot make the petitioner liable to pay the liquidated damages of Rs.1 lakh.

8. In the result, I hold that the petitioner is entitled to join the 4th respondent college and that the action of the 3rd respondent in refusing to issue T.C. is against the prospectus and is illegal. I direct that respondents shall issue the T.C. and other required documents from the 3rd respondent college to enable the petitioner to join the 4th respondent college.

Writ petition is allowed as above.

ANTONY DOMINIC
JUDGE

jan/-